

FBI file on Whole Foods Market, Inc.

Obtained (via FOIA) and posted by AltGov2

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U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

November 30, 2018

MR. RUSS KICK
POST OFFICE BOX 36914
TUCSON, AZ 85740

FOIPA Request No.: 1405742-000
Subject: Whole Foods Market Inc
(1980 – Present)

Dear Mr. Kick:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Section 552/552a. Below you will find check boxes under the appropriate statute headings which indicate the types of exemptions asserted to protect information which is exempt from disclosure. The appropriate exemptions are noted on the enclosed pages next to redacted information. In addition, a deleted page information sheet was inserted to indicate where pages were withheld entirely and identify which exemptions were applied. The checked exemptions boxes used to withhold information are further explained in the enclosed Explanation of Exemptions.

Section 552

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Section 552a

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29 pages were reviewed and **29 pages** are being released.

Below you will also find additional informational paragraphs about your request. Where applicable, check boxes are used to provide you with more information about the processing of your request. Please read each item carefully.

- ☐ Document(s) were located which originated with, or contained information concerning, other Government Agency [OGA].
- ☐ This information has been referred to the OGA(s) for review and direct response to you.
- ☐ We are consulting with another agency. The FBI will correspond with you regarding this information when the consultation is completed.
- ☐ In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) and Privacy Act exemption (j)(2) [5 U.S.C. § 552/552a (b)(7)(E)/(j)(2)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the Freedom of Information Act (FOIA). See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. Enclosed for your information is a copy of the Explanation of Exemptions.

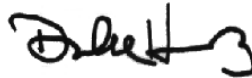
For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following website: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

- ☒ The enclosed material is from the main investigative file(s), meaning the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown such additional references, if identified to the same subject of the main investigative file, usually contain information similar to the information processed in the main file(s). As such, we have given priority to processing only the main investigative file(s) given our significant backlog. If you would like to receive any references to the subject(s) of your request, please submit a separate request for the reference material in writing. The references will be reviewed at a later date, as time and resources permit.
- ☒ See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosures

The enclosed documents represent the final release of information responsive to your Freedom of Information/Privacy Acts (FOIPA) request.

This material is being provided to you at no charge.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

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Page 33
 New York Post
 New York, NY
 Date: 7/18/07
 Edition:

Title:

Whole Foods probes wacky
 Mackey

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33

New York Post, Wednesday, July 18, 2007

nypost.com



JOHN MACKKEY
 Ranter-in-chief.

Whole Foods probes wacky Mackey

By JANET WHITMAN

Whole Foods is conducting an internal investigation into the bizarre Internet chat-room rantings posted anonymously by its co-founder John Mackey — a move that could ratchet up pressure on the maverick executive to step down as chairman and CEO.

As the company announced that its board would form a special committee to begin a probe, Mackey issued an apology to investors.

"I sincerely apologize to all Whole Foods Market stakeholders for my error in judgment in anonymously participating on online financial message

boards," Mackey said. "I am very sorry and I ask our stakeholders to please forgive me."

The environmentally friendly grocery-store chain also acknowledged yesterday that it got a notice that government securities regulators are looking into Mackey's Internet postings.

Using the pseudonym "Rahodeb" — a scrambled version of his wife Deborah's name — the wacky CEO posted more than 1,000 messages on Yahoo! Finance's bulletin board beginning in 1999 and continuing through August of last year.

The Securities and Exchange Commission appears particularly interested

in messages Mackey typed touting Whole Foods, while criticizing Wild Oats Markets — a rival organic grocery chain that his company agreed to acquire in February.

Mackey's chatty, anonymous messages surfaced last week in documents released by the Federal Trade Commission, which is seeking to block Whole Foods' \$565 million takeover of Wild Oats because of concerns the deal would reduce competition.

The messages most likely to put him afoul of securities regulations are the ones concerning Whole Foods' stock price and others bashing Wild Oats.

janet.whitman@nypost.com

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For Whole Foods CEO, Brash Style Takes an Unhealthy Turn

(Indicate page, name of newspaper, city and state.)

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Continued from Page One
three-story building on Eighth Street and Rio Grande in Austin, Texas, late in the 1970s. There, Mr. Mackey and a girlfriend had a health-food store called SaferWay on the first floor, a restaurant on the second and a bed on the third.

A few years later, a handful of health-food-store operators from around the U.S. began gathering periodically to socialize and talk about the business. They were united by two things: their powerful belief in the importance of healthy and natural foods, and a sense that mainstream grocers dismissed them as a bunch of soy-milk-sipping hippies with no clue how to run a business.

"That brought us all together," recalls Harry Lederman, an independent consultant in the natural-food business whose wife founded a health-food chain in Southern California called Mrs. Gooch's. At one of their gatherings in the mid-1980s, Mr. Lederman recalls, Mr. Mackey casually mentioned that he thought local health-food stores ought to unite to form a national chain. He didn't press the point, and no discussion followed. "He just started doing it," Mr. Lederman says.

Mr. Mackey fit in nicely among the health-food industry's scrappy entrepreneurs. He was a six-time college dropout, curly haired and casually dressed. He spoke passionately about food (the natural kind), politics (the libertarian kind) and capitalism (the aggressive kind). Colleagues who knew him as a young man say he was—and remains today, at 53—a man of opposing characteristics: forthright and yet distant, compassionate and yet cut-throat, idealistic and yet capable of compromise.



Perry Odak

Mr. Mackey's mother was a schoolteacher in the Houston area. His father, William S. Mackey Jr., was an accounting professor who later became the CEO of a health-care company, Lifemark Corp. After 15 years of running the company, the elder Mr. Mackey engineered its sale in 1984 for about \$900 million. Before that, he lent his son some money to help him get his grocery business off the ground.

In 1984, the younger Mr. Mackey, now calling his store Whole Foods, opened outlets in Houston and Dallas, and soon after expanded to New Orleans and Palo Alto, Calif. In the 1990s, he took Whole Foods public and went on a buying binge, eventually acquiring 10 small chains, including Mrs. Gooch's.

"We didn't have any clue how he put that together," says Philip Tauber, who, with his wife, Gayle, founded the Kashi cereal brand in 1984. "For him to do that, he needed to have a compulsive, highly competitive leadership quality."

As Whole Foods grew, Kashi and other brands grew with it. Foods once regarded as hopelessly unpopular—and even unpalatable—found a home and a customer base.

The way I see it the aging of the baby boomers and their quest for health and longevity will fuel Whole Foods'

growth for many years to come.
—Rahodeb, August 2001

Mr. Mackey broke not only from the mainstream grocery business, but also from many of his peers in the natural-food world. He built his stores big, with room for beer, wine and potato chips—items some health-conscious merchants refused to carry. He also expanded his audience by offering prepared foods from salads to gourmet soups and lasagna. In doing so, he assured that consumers would do more than pop in for a few items. They would make Whole Foods their primary food store.

Whole Foods today is a giant, with 39,000 employees and 196 stores in the U.S., Canada and the United Kingdom. In the fiscal year ended Sept. 24, 2006, it had a gross profit margin of 35%—compared with 24% at Kroger Co. and 29% at Safeway Inc.—and sales of \$5.6 billion.

Yesterday, Whole Foods shares closed at \$40.08 in 4 p.m. Nasdaq composite trading. That is up from a split-adjusted \$3 per share in 1992, but below the stock's peak of around \$79 in 2005. According to a March regulatory filing, Mr. Mackey owned 1.15 million shares, a stake now worth about \$46 million.

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In conversations with Mr. Gilliland over the years, Mr. Mackey "made no secret of the fact that he thought Whole Foods would eventually kick Wild Oats's butt," says Mr. Gilliland, who now runs a small Boulder-based chain of stores called Sunflower Farmers Market. "John is a little lacking in social graces."

In 2001, Mr. Odak replaced Mr. Gilliland as CEO of Wild Oats. Mr. Odak was new to the job when he attended the Manhattan conference, a Goldman Sachs global retailing event, where Mr. Mackey confronted him. Mr. Odak was in the audience during a breakout session in a small room, where Mr. Mackey discussed the latest news from Whole Foods.

"John, I want to introduce myself," Mr. Odak recalls saying to Mr. Mackey after the session. Mr. Mackey became angry that Mr. Odak had been sitting in, Mr. Odak says. They haven't spoken since. Mr. Odak left Wild Oats in October 2006.

Mr. Mackey doesn't remember the incident the same way, according to Mr. Robb. "Yes, John gave him a competitive, passionate statement," but he said "it was something along the lines of, 'We're coming after these markets.'" Mr. Robb added that Mr. Odak's presence at a breakout session typically aimed at institutional investors was highly unusual.

The Company [Wild Oats] still stinks and remains grossly overvalued based on very weak fundamentals. The stock is up now, but if it doesn't get sold in the next year or so it is going to plummet back down. Wait and see.

—Rahodeb, June 21, 2006

In February, Whole Foods announced plans for its biggest acquisition of all, offering \$565 million, or \$18.50 a share, for Wild Oats, which has 109 locations. The deal, if approved, would make Whole Foods roughly the 10th-largest U.S. grocery chain by number of stores.

But the FTC announced plans to block the acquisition, saying it would increase concentration in the health-food supermarket industry and drive up prices. Supporters of the deal, including Mr. Mackey, note that Whole Foods no longer competes with natural-food companies alone. Now its biggest rivals include many of the mainstream grocers that have embraced the products they once spurned.

Some antitrust experts say Mr. Mackey's Yahoo messages could hurt the company's case if the FTC uses Rahodeb's comments to show that Mr. Mackey viewed the health-food market as distinct from the mainstream grocery market.

Mr. Mackey's defenders say his anonymous comments—though boastful, provocative and impulsive—were no different from his public ones, and were never intended to disclose insider information or move stock prices.

For his part, Mr. Mackey told visitors to the Whole Foods Web site that he had made the online comments because he "had fun doing it." That explanation is consistent with Mr. Mackey's decision last year to cut his annual salary to \$1 starting on Jan. 1 of this year. In a letter to company stakeholders at the time, he explained: "I have reached a place in my life where I no longer want to work for money, but simply for the joy of the work itself."

—Shelly Banjo contributed to this article.

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Key Dates in Whole Foods History

Sept. 20, 1980: John Mackey co-founds Whole Foods in Austin, Texas.

Jan. 23, 1992: Whole Foods goes public on the Nasdaq.

Jan. 13, 1999: CEO Mackey posts his first comment on the Yahoo Finance message boards using the alias 'Rahodeb.'

September 1999: Whole Foods opens its 100th store, in Torrance, Calif.

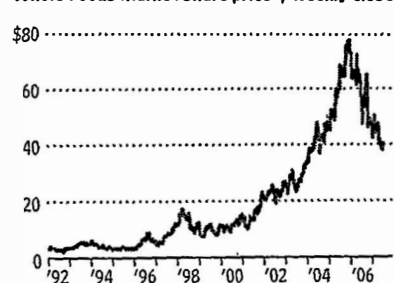
July 31, 2006: Quarterly sales fail to meet Wall Street forecasts, prompting stock-price declines.

Feb. 21, 2007: Company announces plans to acquire Wild Oats Markets Inc., its main rival, for \$565 million.

June 6, 2007: The Federal Trade Commission files suit seeking to block the purchase of Wild Oats on antitrust grounds.

Source: FactSet Research Systems

Whole Foods Market share price*, weekly close



July 17, 2007: Board of Whole Foods discloses that it will investigate Mr. Mackey's postings as Rahodeb, and confirms that the Securities and Exchange Commission has begun an investigation. Mr. Mackey apologizes.

*Split adjusted

(Indicate page, name of newspaper, city and state.)

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Despite its size and fat profit margins, the company has maintained its reputation as a crunchy, counter-culture operation. Whole Foods donates at least 5% of its annual net income to charity. Some stores have solar panels.

In that sense, the company still reflects its founder's business-casual character. Mr. Mackey works from the early morning, when he reads about management or the environment from a tall stack of books at home, to well into the night, when he often sends emails to other executives. He often wears sandals and khaki pants or shorts to the office. He sticks to a vegan diet.

Friends and associates characterize Mr. Mackey as straightforward and transparent. A few years ago, Mr. Mackey was having dinner with Terry Dalton, who founded a Miami natural-food store called Unicorn Village Marketplace at about the same time Whole Foods started in Austin. Whole Foods acquired Unicorn in 1995 for \$4.5 million in cash. Mr. Mackey and Mr. Dalton have remained friends.

During dinner, Mr. Dalton marveled that at the time, Whole Foods's market capitalization had exceeded those of fam-

iliar food-industry giants such as H.J. Heinz Co. Mr. Mackey was so astonished, Mr. Dalton recalls, that he pulled out his cellphone to call Whole Foods's chief financial officer to ask if she knew that their company was bigger than Heinz. (Whole Foods briefly approached Heinz's market capitalization in 2005, but Heinz is now larger.)

When Mr. Dalton heard about Mr. Mackey's online alias, he was stunned—in no small part because he had engaged in dialogue with Rahodeb on the Yahoo board a few years ago. Mr. Dalton was also using a screen name, he says, but doesn't now recall what it was. Mr. Dalton assumed at the time that Rahodeb was a Whole Foods regional president or finance executive, given his knowledge of the company. At one point, Rahodeb accused Mr. Dalton of being an industry insider, saying he knew too much to be a run-of-the-mill investor.

Mr. Mackey, in a statement on Whole Foods's Web site last week, said his anonymous statements didn't reflect his or his company's policies or beliefs. Some of the views Rahodeb expressed, Mr. Mackey said, didn't match his own beliefs.

Mr. Dalton says he doesn't believe Mr. Mackey would do anything unethical. "The last thing I would call John is hypocritical or dishonest," he says. "Maybe he has a little more vanity and ego than I thought."

Mr. Mackey's colleagues say the CEO has had an enormous influence on the marketplace. Today, thanks largely to the influence of Whole Foods, organic milk and yogurt can be found in virtually every grocery store in the country, including Wal-Mart. Among natural-food enthusiasts, it's not unusual to hear Mr. Mackey compared with Bill Gates and Steve Jobs.

"He's a rock star," says Jeff Metzger, publisher of Food World and Food Trade News, two regional grocery newspapers in the Northeast. "He is the company."

Mr. Metzger says the board may feel pressure to replace Mr. Mackey, depending on the outcome of the SEC and internal investigations. If that happens, he says, the food industry would lose a visionary leader. As for Whole Foods, he says, "There isn't a clear line of succession."

I am neither 'kneejerk' or a 'conservative.' My positions are very well thought out. They are based on years of life experience, encyclopedic reading, and clear, honest thinking. Conservative? Hardly. I'm more a revolutionary than anything else. My political views fall into the category of 'Independent' with a strong tilt towards 'Libertarianism.' Teach me to dance? That is very sweet of you. Thank you, but my life is pretty full right now.

—Rahodeb, March 2003

Though Mr. Mackey felt compelled, as Rahodeb, to defend himself frequently on the Yahoo site—including one post on Christmas Day in 2005—he has received relatively little substantive criticism during his tenure at Whole Foods. If there's been any rap, it's that some people have found him hard to work with and unpleasant when angered.

Industry analysts say several former senior company executives, including former president Peter Roy, left the company in part because they had difficulty dealing with Mr. Mackey. Mr. Roy declined to comment.

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Walter Robb, one of two co-presidents at Whole Foods, acknowledges that Mr. Mackey has rubbed some people the wrong way and that he, too, has occasionally butted heads with his boss. But Mr. Robb says the no-nonsense style is refreshing and inspires loyalty. "He's not vanilla ice cream, but then we're not a vanilla ice cream shop, either," says Mr. Robb, who has worked at Whole Foods for 18 years. "John creates a space that allows you to bring your full creativity and potential to the company."

Mr. Mackey has also squared off with those outside the company, including the economist Milton Friedman; Michael Pollan, author of "The Omnivore's Dilemma"; and union leaders who have tried to organize workers at Whole Foods stores.

Perhaps his most energetic confrontations in recent years have been with executives from Wild Oats. At least 240 of Rahodeb's 1,300 or so posts, which can be seen on Yahoo Finance, mentioned the rival company.

After Wild Oats entered Dallas and a few other Whole Foods markets in the 1990s, Mr. Mackey retaliated by opening a store in Boulder, Colo., Wild Oats's hometown, and offering steep price discounts. He sent Mike Gilliland, co-founder of Wild Oats, the board game Risk, a simulated battle for world domination. Attached was a note, Mr. Gilliland says, that read: "Forewarned is forearmed."

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UNRAVELING RAHODEB

A Grocer's Brash Style Takes Unhealthy Turn

Were Posts by Mackey, CEO of Whole Foods, A Case of Ethics, or Ego?

By DAVID KESMODEL
And JONATHAN EIG

John Mackey has never needed the anonymity of the Internet to speak bluntly.

"I'm going to destroy you," the co-founder and chief executive of Whole Foods Market Inc. shouted at Perry Odak, CEO of Wild Oats Markets Inc., the first time the two men met six years ago at a retailing conference in Manhattan, according to Mr. Odak.

At that time, Mr. Mackey had already established a reputation as a maverick, whose growing chain of upscale natural-foods stores was shaking up the way traditional grocers did business. Officials at Whole Foods say Mr. Mackey tells a different version of the story—with milder language—but the confrontation has nonetheless become part of his food-industry legend. Mr. Mackey's combativeness became even more widely known with the revelation last week that he used an alias for nearly eight years to post messages on Yahoo

Finance message boards, bashing competitors and praising everything from his company's quarterly financial performance to his own haircut.

On Tuesday, Mr. Mackey apologized and the Whole Foods board announced it will launch an internal investigation. The Securities and Exchange Commission is examining the chief executive's posts to see if they violated the law. Mr.



John Mackey

Mackey's online alter ego came to light in a court filing by the Federal Trade Commission, which filed a lawsuit last month seeking to block Whole Foods's planned purchase of Wild Oats on antitrust grounds. Meanwhile, Mr. Mackey's critics and supporters alike find themselves struggling to explain his behavior.

While Mr. Mackey has declined interview requests, Whole Foods said in a statement last week that its chairman and CEO's online comments—attributed to Rahodeb, an anagram of his wife's name—were personal, not professional. But friends and colleagues of the vegan college dropout say that as Mr. Mackey built the world's largest natural-foods retailer, there was little distinction between his professional and personal sides. That's why few people close to him were surprised that he tooted his own horn and blasted his critics online. Their only surprise was that he did it anonymously.

Obviously, WFMI is no Wal-Mart (not yet anyway)!

—Rahodeb, Nov. 29, 2000

Mr. Mackey's career, and a revolution in American supermarkets, began in a
Please turn to page A10

(Indicate page, name of newspaper, city and state.)

A10
Wall Street Journal
New York, NY

Date: 7/20/07

Edition:

Title: A Grocer's Brash Style Takes Unhealthy Turn

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Classification:

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Indexing:

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JOHN MACKEY
Advised to step down.

Firm asks Mackey to log out

By JANET WHITMAN

Whole Foods CEO and co-founder John Mackey, whose credibility is in question following revelations he posted more than a thousand bizarre rants anonymously in financial chat rooms, should give up his chairman role, an investment group that advises a coalition of labor unions said yesterday.

In a letter sent to Whole Foods' lead independent director, CtW Investment Group urged the board to name an independent chairman immediately to rebuild trust with government regulators and shareholders in the wake of the scandal.

CtW, a branch of labor union coalition Change to Win, whose members own about 900,000 Whole Foods shares, applauded the board's decision to appoint a special committee to look into Mackey's shenanigans.

But the group urged the company to go further to see if he's fit to remain as CEO.

"Regardless of whether Mr. Mackey is ultimately found to have violated the law or the company's code of conduct," the group wrote, "his poor judgment has already damaged his credibility, jeopardized the proposed Wild Oats' acquisition and triggered a Securities and Exchange Commission investigation."

(Indicate page, name of newspaper, city and state.)

41
New York Post
New York, NY

Date: 7/26/07
Edition:

Title: Firm Asks Mackey
to Log Out

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Monday, July 30, 2007 **A11*****Mickey Mouse Charges
Of Mackey Malfeasance***

Surely there must be more alleged against Whole Foods CEO John Mackey than what is highlighted in your editorial ("Mr. Mackey's Offense," July 16). Possession of insider information, so far as I understand, is not criminal or even unethical unless it is used to guide private stock sales or purchases. Furthermore, information disseminated via public media no longer classifies as insider information.

I could understand if Mr. Mackey was accused of spreading false rumors about his company to manipulate the stock price, but I have not heard such allegations. Don't most CEOs, through their advertising teams, post "cheer-leading" visions of their product/company in the public media using surrogate personalities and actors? The release of such information without attribution makes the information less certain, but not illegal or unethical.

I wonder if we are not falling victim to a distorted sense of hubris in the United States: We are offended to the point of threatening legal action over superficial issues that are probably neither unethical nor illegal, while we fail to react to demonstrably bad behavior to which we have become inured.

One can be forgiven for having an initially uncomfortable feeling about such CEO behavior, but progressing to a formal and public investigation should require some solid hypothesis that a law has been broken. Indeed, when a public official continues an investigation while knowing that none of the "allegations" are actual violations of the law, that public official is, in my opinion, guilty of prosecutorial abuse. Sadly, our society often rewards such abusive, prosecutorial demagoguery with higher office.

JEFF SOURBEER
Belleair, Fla.

(Indicate page, name of newspaper, city and state.)

A11
Wall Street Journal
New York, NY

Date: 7/30/07
Edition:

Title: Mickey Mouse Charges
of Mackey Malfeasance

Character: 318C
or
Classification:
Submitting Office: NYO

Indexing:

318C-NY-297727-6

SEARCHED	INDEXED
SERIALIZED	FILED
AUG 9 2007	
FBI - NEW YORK	
SA	LOA

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b7C

(Mount Clipping in Space Below)

Federal Bid to Block Whole Foods Deal Heads to Court

By DAVID KESMODEL

When the U.S. government goes to court this week to try to block Whole Foods Market Inc.'s planned purchase of Wild Oats Markets Inc., the judge will wrestle with this question: Which of John Mackey's arguments is most convincing?

The Federal Trade Commission contends Whole Foods and Wild Oats operate in a distinct market for premium natural and organic groceries and the \$565 million deal would curtail competition and raise prices in that segment. To make its case, the agency is relying on comments by Mr. Mackey, the chief executive of Whole Foods, which suggest he considers his company's playing field different than that of typical grocers.

"Safeway and other conventional retailers will keep doing their thing—trying to be all things to all people," Mr. Mackey has said, according to the FTC. "They can't really effectively focus on Whole Foods' [clientele]."

But Mr. Mackey has said Whole Foods faces competition from the conventional supermarket giants, which increasingly hawk natural and organic foods. "Whole Foods faces more competition today than ever before in our entire history!" Mr. Mackey wrote on his blog on Whole Foods' Web site last month.

Some of Mr. Mackey's assertions have gotten him into hot water because of their venue. While the FTC reviewed the merger, it learned Mr. Mackey had posted anonymous

comments about his company and others in online stock forums for years. Those postings are now the subject of a Securities and Exchange Commission informal inquiry and of an internal probe by Whole Foods' board.

How the judge ultimately defines the natural-foods market is central to the outcome of the antitrust case. The FTC is seeking a preliminary injunction to squelch the merger. A two-day hearing starts tomorrow in federal court in Washington, D.C.

Judge Paul L. Friedman is expected to rule within a few weeks. If he rules in the government's favor, the companies could appeal. The likely outcome is they would cancel their merger plans.

The lawsuit by the FTC, filed June 6, surprised many observers because Whole Foods and Wild Oats are relatively small players in the supermarket business. If they merged, the combined company would have about 300 stores in the U.S., Canada and the United Kingdom. In contrast, Wal-Mart Stores Inc. has about 3,000 stores in the U.S. that sell groceries.

Whole Foods, of Austin, Texas, and Wild Oats, of Boulder, Colo., compete in about 20 metropolitan areas, including Los Angeles, Chicago and Denver. The government is expected to argue that with the presence of both chains in a particular market, each keeps the other from raising prices.

(Indicate page, name of newspaper, city and state.)

All
Wall Street Journal
New York, NY.

Date:

Edition: 7/30/67

Title: Federal Bid to Block
Whole Foods Deal Heads to
Court

Character:

or

B18C

Classification:

Submitting Office: NYO

Indexing:

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/20/2007

To: New York

Attn: Squad C-1

From: New York

Squad C--1

Contact: SA [redacted]: tvc h

Approved By: [redacted] JC/h

Drafted By: [redacted]

tvc

Case ID #: 318C-NY-NEW (Pending)

Title: [redacted]
WHOLE FOODS MARKET;
SFA;
OO:NYO

Synopsis: TO open and assign case

Details: The Southern District of New York, AUSA Tony Barco [redacted]
[redacted] has requested that a Special Agent be assigned to the
above matter. [redacted] may have violated federal law [redacted]
[redacted] by making various anonymous internet chat board
postings concerning [redacted]

Open and assign to SA [redacted]

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 07/23/2007

To: New York

Attn: Squad C-1

From: New York

Squad C-1

Contact: SA [REDACTED]

Approved By: [REDACTED]

Pjclgsm

Drafted By: [REDACTED]

lka lck

Case ID #: 318C-NY-297727 (Pending)

Title: [REDACTED]

WHOLE FOODS MARKET;
SFA;
OO:NYO

Synopsis: To report telephonic meeting with AUSA Tony Barco on July 23, 2007.

Details: On July 23, 2007, SA [REDACTED] spoke with AUSA Barco regarding captioned case. ASUA Barco prepared an access request letter for the Securities and Exchange Commission (SEC) located in Fort Worth, Texas. Additionally, Whole Foods hired an external law firm to conduct an internal investigation [REDACTED]

[REDACTED]

♦♦

UPLOADED *QK 8-13-07*

318C-NY-297727-7

SEARCHED	INDEXED
SERIALIZED	FILED
AUG 10 2007	
FBI - NEW YORK	
SA [REDACTED]	lck
AUSA meeting [REDACTED]	wpd

3181-NY-297727-8

SEARCHED	INDEXED
SERIALIZED	FILED
SEP 19 2007	
FBI - NEW YORK	
SA	WA

Must meeting 9-17-07. week

UPLOADED 0329-25-07

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 09/18/2007

To: New York

From: New York

Squad C-3

Contact: SA [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED] lka

Case ID #: 318C-NY-297727 (Pending)

Title: [REDACTED]

WHOLE FOODS MARKET;
SFA;
OO:NY

Synopsis: To report telephonic meeting with AUSA Tony Barco
[REDACTED] on September 17, 2007.

Details: On September 17, 2007, Writer spoke with AUSA BARCO regarding captioned case. On September 14, 2007, the Securities and Exchange Commission (SEC) met with WHOLE FOODS' special committee, corporate counsel, and [REDACTED] counsel to discuss [REDACTED] postings on Yahoo Finance Stock Forums. The main focus of the meeting was to determine if posting on a Internet chat room could be considered material.

The SEC called AUSA BARCO with new information regarding captioned case that was disclosed in the meeting.

The SEC will provide copies of all information to AUSA Barco and Writer.

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3186-NY-29727-9

SEARCHED	INDEXED
SERIALIZED <i>SS</i>	FILED <i>SS</i>
NOV 13 2007	
FBI-NEW YORK	
<i>SA</i>	UCA

AUSA meeting 11-13-07 w/ per

UPLOADED *SS* 11-14-07

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 11/13/2007

To: New York

From: New York

Squad C-1

Contact: SA [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

lka

Case ID #: 318C-NY-297727 (Pending)

Title: [REDACTED]

WHOLE FOODS MARKET;

SFA;

OO:NY

Synopsis: To report telephonic meeting with AUSA Tony Barco, [REDACTED] on November 13, 2007.

Details: On November 13, 2007, Writer spoke with AUSA Barco regarding captioned case. The Securities and Exchange Commission (SEC) has received all of information gathered from WHOLE FOODS internal investigation. The SEC has determined that most of the information has no merit for a criminal case.

The SEC is pursuing an [REDACTED] allegation against [REDACTED]

[REDACTED] is meeting with the SEC on the record to testify to his trades. AUSA Barco requested the case remain open until [REDACTED] testimony with the SEC.

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38C-NY-297727-10

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 10 2008	
FBI - NEW YORK	
SA	UKA

assuming 1-worship

UPLOADED 09/1-14-08

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 01/10/2008

To: New York

From: New York

Squad C-1

Contact: SA [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

lka

Case ID #: 318C-NY-297727 (Pending)

Title: [REDACTED]

WHOLE FOODS MARKET;

SFA;

OO:NY

Synopsis: To report telephonic meeting with AUSA Tony Barco.

Details: On January 10, 2008, Writer spoke with AUSA Barco telephonically, [REDACTED] regarding captioned case. The Securities and Exchange Commission (SEC) is still reviewing the documents from the WHOLE FOODS internal investigation. AUSA Barco requested the case remain open at this time.

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380-NY-297727-111

SEARCHED	INDEXED
SERIALIZED	FILED
JAN 14 2008	
FBI - NEW YORK	
SA [redacted]	UAA

[redacted] Pl. upd

UPLOADED 02-17-08

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b7C

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 01/14/2008

To: New York

From: New York

Squad C-1

Contact: SA [REDACTED]

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b7C

Approved By: [REDACTED]

Drafted By: [REDACTED]

ika *USA*

Case ID #: 318C-NY-297727 (Pending Inactive)

Title: [REDACTED]

WHOLE FOODS MARKET;
SFA;
OO:NY

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Synopsis: To change captioned case from pending to pending inactive.

(X) USA

Details: Writer requests the captioned case be changed to pending inactive due to case remaining open at request of AUSA Anthony Barkow.

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3181-N-297727-12

SEARCHED	INDEXED
SERIALIZED <u>bs</u>	FILED <u>bs</u>
MAY 12 2008	
FBI-NEW YORK	
SA <u>[redacted]</u>	USA <u>[redacted]</u>

destination [redacted] upel
declin [redacted] wpd

b6
b7C

UPLOADED

WITH TEXT _____
WITHOUT TEXT _____
BY bs _____
DATE 5/15/08 _____

In Reply, Please Refer to

File No. 318C-NY-297727

FBI CASE STATUS FORM

Date: 05/12/2008

To: USA Michael Garcia, SDNY, One Saint Andrew Plaza, NY, NY
(Name and Address of USA)From: ADIC Mark J. Mershon
(Name of Official in Charge and Field Division)*Sy*

(Signature of Official in Charge)

RE: [Redacted] (Name of Subject) (Age) Male (Sex)You are hereby advised of action authorized by AUSA Anthony Barco
(Name of USA or AUSA)on information submitted by Special Agent [Redacted] (Name) on 04/30/2008 (Date)

(Check One)

- ☐ Request further investigation
- ☒ Immediate declination
- ☐ Filing of complaint
- ☐ Presentation to Federal Grand Jury
- ☐ Filing of information
- ☐ Other

For violation of Title 18, USC, Section(s) 371

Synopsis of case:

The Southern District of New York (SDNY) U.S. Attorney's Office (USAO) declines to prosecute the case against [Redacted] due to the Securities and Exchange (SEC) closing their investigation. The FBI is closing the case against [Redacted] as it will not be prosecuted by the USAO-SDNY.

318C-NY-297727
LKA/lka
(1)

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3181-NY-297727-13

SEARCHED	INDEXED
SERIALIZED <i>bs</i>	FILED <i>bs</i>
AUG 15 2008	
FBI-NEW YORK	
SA [redacted]	NOA [redacted]

closing report
upload 8/15/08

SI.

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FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 05/06/2008

To: New York

From: New York

Squad C-1

Contact: SA [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED]

lka LWA

Case ID #: 318C-NY-297727 (Closed)

Title: [REDACTED]

WHOLE FOODS MARKET;
SFA;
OO:NY

Synopsis: To request captioned case be closed.

Details: On April 30, 2008, AUSA Anthony Barco telephonically contacted Writer. The Securities and Exchange Commission (SEC) closed their investigation into [REDACTED] and subsequently the United States Attorney's Office, Southern District of New York, declined prosecution of captioned case.

All statistical accomplishments have been claimed and all the R-84s have been submitted.

Status of Evidence:

Circle One:

- A) Returned to owner.
- B) Destroyed.
- C) Maintain until all appeals are exhausted.
- ☒ D) Not applicable

Status of Valuable Evidence:

Circle One:

- A) Forfeited.

0001
CLOSE ON FILE
[REDACTED]
[REDACTED]

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To: New York From: New York
Re: 318C-NY-297727, 05/06/2008

B) Returned to owner.

C) Abandoned.

D) Maintain until all appeals are exhausted.

E) Not applicable

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